

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

---

THE UNITED STATES OF AMERICA

STATEMENT OF PARTIES  
WITH RESPECT TO  
SENTENCING FACTORS  
PURSUANT TO USSG  
SECTION 6A1.2

-V-

**Case No. 6:10-CR-06038-001**

**Hon. Charles J. Siragusa**  
**United States District Judge**

DAVID R. RINERE,

Defendant

---

PLEASE TAKE NOTICE, that the defendant herein hereby adopts the findings of the 6 October 2011 Pre-Sentence Report (hereinafter PSR) with respect to the sentencing factors that are present in this action with the following additions and corrections:

1. Page 2 - Relative to Identifying Data, the defendant notes that he also has scars on his legs and on his back;
2. Page 8 - Relative to Paragraph 37 of the PSR, the defense objects to the application of the two (2) level increase of United States Sentencing Guideline (USSG) 2G2.1(b)(3) consistent with the provisions of Paragraph 11 of the 16 February 2011 Plea Agreement.
  - Also relative to Paragraph 37 of the PSR, the defense notes that the factual basis in the Plea Agreement does not feature language describing a transfer of images from the cellular telephone of the defendant to a computer in connection with the offense of conviction, the stipulated offense pursuant to USSG Section 1B1.2(a), or as relevant conduct;
3. Page 15 - Relative to Paragraph 81 of the PSR (**Mental and Emotional Health**), the defendant notes that he has been a mental health in-patient in a dual diagnosis treatment facility at least six (6) or seven (7) times since the age of 15 for mental disorders including anorexia and bulimia.
  - The defense notes that the list of agencies set forth in Paragraph 81 of the PSR is not a complete listing of the agencies the defendant has interacted with in his life.

-2-

- The defense further notes the claim of the defendant that he has been diagnosed as a paranoid/schizophrenic at least four (4) times in his life;
- 4. Page 16 - Relative to Paragraph 83 of the PSR (**Substance Abuse**), the defendant notes that he has participated in eighteen (18) drug rehabilitation programs, and twenty-one (21) drug detoxification programs since the age of 18.
  - The defense notes that the list of substances set forth in Paragraph 83 of the PSR is incomplete, and should also include LSD and heroin use on the part of the defendant as well as the fact that he has been hospitalized for drug overdoses in his life;
- 5. Page 16 - Relative to Paragraph 85 of the PSR (**Employment Record**), the defendant notes that while he worked for Pinkerton Security in Butler, PA he managed 150 employees at fifteen (15) job sites; and when he worked for Burger King in Butler, PA he was the restaurant manager.

DATED: November 17, 2011  
at Rochester, New York

Respectfully submitted,

The Okay Law Firm  
546 East Main Street  
Post Office Box 622  
Batavia, New York 14021-0622  
(585) 343-1515

BY: 

M. Kirk Okay  
*Counsel to David R. Rinere*

TO: Hon. Charles J. Siragusa  
United States District Judge  
United States District Court  
Western District of New York  
United States Court House  
100 State Street  
Rochester, New York 14614

-3-

Marisa J. Miller, Esq.  
Assistant United States Attorney  
620 Federal Building  
100 State Street  
Rochester, New York 14614

David B. Spogen  
United States Probation Officer  
United States Probation  
100 State Street  
Rochester, New York 14614

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

---

THE UNITED STATES OF AMERICA

AFFIRMATION OF SERVICE

-V-

Case No. 6:10-CR-06038-001

DAVID R. RINERE,

Appellant

---

Mehmet K. Okay, an attorney duly admitted to the practice of law in the United States District Court for the Western District of New York, affirming under the penalties of perjury declares to be true and states as follows:

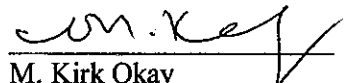
I am over the age of eighteen years and not a party to this action. I reside in Batavia, New York. On the 17th day of NOVEMBER 2011 I served the annexed STATEMENT OF PARTIES WITH RESPECT TO SENTENCING FACTORS PURSUANT TO USSG SECTION 6A1.2 in the above- styled and numbered cause upon:

MARISA J. MILLER, ESQ.  
ASSISTANT UNITED STATES ATTORNEY  
620 FEDERAL BUILDING  
100 STATE STREET  
ROCHESTER, NEW YORK 14614 and upon

DAVID B. SPOGEN  
UNITED STATES PROBATION OFFICER  
UNITED STATES PROBATION  
100 STATE STREET  
ROCHESTER, NEW YORK 14614

by electronic means via the CM/ECF System.

DATED: November 17, 2011  
at Rochester, New York

  
M. Kirk Okay  
Counsel to David R. Rinere

The Okay Law Firm  
546 East Main Street  
Post Office Box 622  
Batavia, New York 14021-0622  
Telephone (585) 343-1515